

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

RCRev..No. 359 of 2004

RCA.118/1997 OF ADDL. DISTRICT COURT (ADHOC-I), THALASSERY,
RCP.111/1995 OF PRL.MUNSIFF COURT.,KANNUR.
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APPELLANT/RESPONDENT:

N.P.BALAKRISHNAN, S/O.KUNHIRAMAN,
PALLIKUNNU AMSOM, CHALAD DESOM,
P.O.PALLIKUNNU, KANNUR.

BY ADV. SRI.B.KRISHNAN,
ADV. SRI.R.PARTHASARATHY.

RESPONDENT/ RESPONDENT/ PETITIONER:

P.M.R.MARIYUMMA, D/O.ABDUL RAHIMAN,
CHIRAKKAL AMSOM, PUTHIYAPARAMBA,
P.O.CHIRAKKAL, KANNUR DISTRICT.

BY ADV. SRI.A.MOHAMED MUSTAQUE,
ADV. SRI.M.RAMESH CHANDER.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

RCR No.359 of 2004-C

Order

Balakrishnan Nair, J.

The tenant is the revision petitioner. The landlord is the respondent. The RCP was filed under Sections 11(2), 11(3), 11(4)(iii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The eviction was ordered by the Rent Controller under Sections 11(3), 11(4)(iii) and 11(4)(v). The same was affirmed by the Appellate Authority also. Hence this revision.

2. The landlord sought eviction of the room for the bona fide requirement of her second son, to start the business in timber. He is unemployed and is dependent on the landlord for getting a building. The tenant has ceased to occupy the premises for more than four years. So, eviction was sought under Section 11(4)(v). It was also contended that the tenant has got five other buildings in front of the landlord's building and he is conducting business there. So, eviction was sought under Section 11(4)(iii) also. From the side of the landlord, her sons were examined as PW1 and PW2 and Exhibits A1 to A15 were marked. From the side of the respondent, Exts.B1 to B15 were marked.

Ext.C1 Commissioner's report was marked as court exhibit. Thereafter, Exts.X1 to X37 were marked from the side of the tenant.

3. In this revision, the finding under Section 11(4)(v) is firstly attacked. The learned counsel for the revision petitioner, submitted that relying on Ext.C1 Commissioner's report and ignoring Exts.B3 to B10 documents, produced by the tenant, the said finding was rendered. According to him, the Commissioner inspected the premises without notice. The Commissioner was not examined also and therefore, the Commissioner's report cannot be relied on. The learned counsel for the revision petitioner took us through the evidence on record, the pleadings in the RCP and the counter statement. We notice that in the evidence of PW1, he has clearly stated that the building is not in occupation by the tenant for the last four years. We also notice that practically, there is no cross examination on that point. Out of the documents produced, Exts.B9 and B10 alone are relevant as they were documents dated 28.02.1995. But, the renewal of the D & O licence from the panchayat as per those documents will not conclusively prove that the licensee is carrying on the business. Even if the business is stopped, the licence can be got renewed on payment of the requisite fee to the panchayat. So, having regard to the

preponderance of probability, if the Rent Controller entered a finding that the premises were not being used by the tenant for the last four years and it was affirmed by the Appellate Authority, we find nothing illegal, improper or irregular with the said finding, warranting interference in a revision under Section 20 of the Act. So, even if the Commissioner's report is eschewed from consideration, we are of the view that the findings of the court below are sustainable.

4. Secondly, the learned counsel for the petitioner attacked the finding of the authorities below under Sections 11(4)(iii). It is true, the Appellate Authority has dealt with the matter without elaborately referring to the materials on record or the evidence. But, when the Appellate Authority is affirming the findings of the original authority, detailed reasons need not be given. Further, the main contention of the learned counsel for the petitioner against the said finding is that the other building found to be in his ownership is already in occupation of "Kunhiraman & Sons", which is a firm in which the revision petitioner is only one of the partners. Such a possession of building will not satisfy the requirement of Section 11(4)(iii), it is submitted. But, the recitals in Ext.A15 would show that the revision petitioner is in exclusive possession of

the building covered by the said assignment deed. By the said deed, the petitioner's possession of the building is reiterated and the other legal heirs assigned their rights in that property in favour of the petitioner. Therefore, the finding of the Rent Controller that the petitioner is in possession of another building for running the business has to be upheld.

5. Thirdly, the learned counsel for the petitioner attacked the findings of the authorities below under Section 11(3). He claimed the benefit of the first proviso to Section 11(3), which says that if the landlord is in possession of another building, special reasons should be shown for getting eviction under Section 11(3). The Rent Controller rejected the claim made by the tenant for the protection of the first proviso. The Appellate Authority dealt with the matter in a cryptic manner. But, we notice that there is no pleading in this regard in the counter statement of the tenant. But the learned counsel for the tenant would rely on the deposition of PW1 in which he has admitted that the room belonging to the landlord has been vacated by one tenant called Prabhakaran. The Door Number of that room is 588. But in the deposition of PW1, it has been clarified that the said room is presently used as a store-shed. Further, a vacant room is not sufficient to run timber business. Therefore, we find that the

claim raised by the learned counsel for the petitioner under the first proviso to Section 11(3) is untenable. Regarding the protection of the second proviso, the burden is on the tenant to prove the same. But, the tenant has not entered the box or tendered any evidence.

6. In the result, we find that no ground has been made out, warranting interference with the orders of the Rent Controller or the Appellate Authority. It is true that the Appellate Authority has not dealt with each point as expected of an Appellate Authority. But, for the said defect, we feel that it is unnecessary to remand the matter and cause unnecessary harassment to both sides. This is so because, on merits based on the evidence on record, we are satisfied that the orders of the authorities are valid. In the result, the revision petition fails and it is dismissed with costs.

K.BALAKRISHNAN NAIR,JUDGE

07.11.2007

T.R.RAMACHANDRAN NAIR, JUDGE

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